

UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

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KAIWA C. and TAMMY SHELDON

v.

CONCORDE TRADING GROUP, INC.,  
MARK TODD HAUZE, and CHARLES  
SCOTT RUTHERFORD

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CFTC Docket No. 00-R081

ORDER PURSUANT TO  
DELEGATED AUTHORITY

On September 19, 2000, an Administrative Law Judge (“ALJ”) issued an order dismissing Kaiwa C. and Tammy Sheldon’s reparations complaint in light of their settlement agreement with respondents. The ALJ also granted complainants’ and respondents’ joint motion to “remove Charles Scott Rutherford as a named respondent.” On September 20, 2000, the ALJ issued an order that amended his September 19 order by vacating his grant of the joint motion. In January 2001, complainants submitted a petition seeking the same relief that the ALJ had initially granted and then denied. In support, they emphasize that Kaiwa C. Sheldon never dealt with Rutherford and made an error when he named Rutherford as a respondent.

Part 45 of the Commission’s Rules indicates that documents contained in the record of reparations cases are available to the public unless “subject to a protective order.” Consistent with this rule, the Sheldons’ complaint against Rutherford has been available to the public since at least June 2000. Respondents’ written submissions denying that Rutherford had any involvement with complainants and complainants’ written submissions acknowledging that they named Rutherford in error have also been

available to the public. When the record is read as a whole, it shows that the Sheldons' charges against Rutherford were the result of confusion on complainants' part.

Such a mistake, however, does not establish a basis for the relief complainants seek. As the Commission recently noted in a somewhat similar context, "Commission proceedings are presumptively resolved in a public manner." *In re Laken*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶28,458 at 51,942 n.36 (CFTC Feb. 8, 2001). Moreover, once a document has been made available to the public, the Commission's obligation to allow disclosure pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (1994 & Supp. IV 1998) may be implicated. Consequently, the fact that, in retrospect, the parties agree that a charge should not have been made does not justify relief that involves amending a record to make previously public information non-public.

In any case, complainants' petition is essentially an untimely appeal from the ALJ's September 20, 2000 order that denied the relief they now request from the Commission. Complainants have not explained their failure to file a timely challenge to that order. Moreover, respondent Rutherford, the party most directly aggrieved by the ALJ's amendment to his previous order, also failed to appeal from the ALJ's ruling. Given these circumstances and the fact that the record as a whole accurately describes

Rutherford's involvement in the charges complainants raised, the Sheldon's petition is denied.

IT IS SO ORDERED.<sup>1</sup>

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Edson G. Case  
Deputy General Counsel  
Commodity Futures Trading Commission

Dated: April 5, 2001

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<sup>1</sup> For the Commission pursuant to delegated authority. 17 C.F.R. § 12.408(a)(4).